

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOSH D. THOMAS,

Petitioner,

v.

C. KOENIG,

Respondent.

No. 1:20-cv-00996-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT
PETITIONER'S MOTION TO WITHDRAW
AND TO DISMISS § 2254 PETITION

(Doc. Nos. 1, 17, 19)

A few months after petitioner Hosh D. Thomas filed the instant § 2254 petition seeking federal habeas relief, he moved to withdraw his petition “[d]ue to recent changes in state law affecting issues not presented” on the petition. (Doc. Nos. 1; 17 at 1.) While respondent has not filed an answer in this case, respondent has filed a statement of non-opposition to petitioner’s motion to withdraw his petition. (Doc. No. 18.) Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, this matter was referred to a United States Magistrate Judge.

On November 23, 2020, the assigned magistrate judge issued findings and recommendations, recommending that petitioner’s motion to withdraw and to dismiss the pending petition be granted. (Doc. No. 19.) No parties have objected thereto, and the time to do so has passed.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a *de novo* review of the case. The court finds that the magistrate judge’s findings and

1 recommendations are supported by the record and proper analysis and will adopt them.

2 The court also finds that petitioner is not entitled to a certificate of appealability. A
3 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's
4 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
5 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of
6 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the
7 petition should have been resolved in a different manner or that the issues presented were
8 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484
9 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). In the present case, the
10 court finds that reasonable jurists would not find the court's determination that the petition should
11 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further.
12 Therefore, the court declines to issue a certificate of appealability.

13 In light of the foregoing, the court orders as follows:

- 14 1. The findings and recommendations (Doc. No. 19), filed November 23, 2020, are
15 ADOPTED in full;
- 16 2. Petitioner's motion to withdraw (Doc. No. 17) is GRANTED;
- 17 3. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED without
18 prejudice;
- 19 4. The court DECLINES to issue a certificate of appealability; and
- 20 5. The Clerk of Court is DIRECTED to assign a district judge to this case for the
21 purpose of closing the case, then to enter judgment and close the case.

22 IT IS SO ORDERED.

23 Dated: February 2, 2021

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UNITED STATES DISTRICT JUDGE